Tentative Rulings for August 18, 2016
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

14CECG01169 ***Martin-Bloxham v. Estate of John Edward Dehart*** **(Dept. 503)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(29) **Tentative Ruling**

Re: ***Maria Barbosa Avila, et al. v. Tos Farms, Inc., et al.***
Superior Court Case No. 16CECG00086

Hearing Date: August 18, 2016 (Dept. 402)

Motion: Defendants Four Warns Corporation and Numark Transportation, Inc.'s motion to strike portions of second amended complaint

Tentative Ruling:

To order off calendar as moot in light of Plaintiffs' having filed a third amended complaint.

Explanation:

Where a plaintiff properly files an amended complaint, the amended complaint becomes the operative pleading. (*JKC3H8 v. Colton* (2013) 221 Cal.App.4th 468, 477.) The filing of an amended complaint moots a motion directed to a prior complaint. (*Ibid*.)

Here, Defendants Four Warns and Numark Transportation filed a motion to strike portions of Plaintiffs' second amended complaint, on June 20, 2016. On August 5, 2016, Plaintiffs filed, pursuant to a stipulation and order also filed August 5, 2016, a third amended complaint. As the third amended complaint is now the operative complaint, Defendants' motion to strike is moot. Accordingly, the motion is taken off calendar.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 8/18/16 .
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Worrell v. Case***, Superior Court Case No. 13CECG02596

Hearing Date: **August 10, 2016 (Dept. 402)**

Motion: (1) Plaintiff's Motion to Compel Further Responses to Demand for Production Set 1 and Special Interrogatories Set 1
(2) Plaintiff's Motion to Compel Further Responses to Inspection Demand Set 1

Tentative Ruling:

To deny the motion to compel further responses to Demand for Production of Documents Set 1 and Special Interrogatories Set 1. (Code Civ. Proc. §§ 2016.040, 2030.300(b), 2031.310(b)(2).)

To deny the motion to compel further responses to inspection demand set 1 (re inspection of two semi-trailers) as moot.

Explanation:

Motion to Compel Further Responses to Demand for Production Set 1 and Special Interrogatories Set 1

The motion to compel "shall" be accompanied by a declaration stating facts showing a reasonable and good faith attempt at an informal resolution of **each issue** presented by the motion. (Code Civ. Proc. §§ 2016.040, 2030.300(b) [interrogatories], 2031.310(b)(2) [inspection demands].)

Though plaintiff filed a meet and confer declaration, she makes no representation that she met and conferred, or attempted to meet and confer, regarding the discovery subject to this motion. She only claims to have met and conferred regarding the other motion. (Worrell Dec. ¶ 9.) Defendants' counsel makes clear that inspection of the two trailers was the only subject plaintiff discussed. (Mitchell Dec. ¶ 2.) Meet and confer is a mandatory requirement. Since plaintiff failed to satisfy this requirement, the motion should be denied.

Motion to Compel Further Responses to Inspection Demand Set 1

This motion concerns plaintiff's discovery request to inspect her two 45-foot trailers. Since the filing of the motion, plaintiff has been granted access and inspected the trailers. (See Supplemental Mitchell Dec. filed 8/11/16.) Accordingly, the motion is moot and there is no relief to grant.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will

serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 8/17/16 .
(Judge's initials) (Date)

(20) **Tentative Ruling**

Re: ***Boyd v. J.H. Boyd Enterprises, Inc., et al.***, Superior Court Case No. 14CECG03792, consolidated with ***J.H. Boyd Enterprises, Inc. v. Boyd et al.***, Superior Court Case No. 15CECG00915

Hearing Date: **August 18, 2016 (Dept. 402)**

Motion: Lizbeth Boyd's Motion for Preliminary Injunction

Tentative Ruling:

To Deny. (Code Civ. Proc. § 526.)

Explanation:

As a preliminary matter, it seems clear that defendants have not complied with Corporations Code section 317. The corporation can elect to indemnify a director by a "majority vote of a quorum consisting of directors who are not parties to such proceeding." (Corp. Code § 317(e)(1).)

Defendants do not seem to seriously contend that the vote at the first board of directors meeting on December 31, 2014, complied with section 317. A second indemnification vote was held during a Board of Directors Meeting on May 27, 2016. (L. Boyd Dec. ¶ 6.) The entire Board was resent for this vote, and just the two uninterested directors voted to have the corporation indemnify directors and defendants Martha Marsh, Louise Autenrieb, Robert Marsh and advance expenses incurred by them in defending against this action. (L. Boyd Dec. ¶ 7, Exh. 2.) The meeting minutes state that "[t]he motion passed as a majority of a quorum consisting of directors who are not parties to such proceedings voted in the affirmative." (*Ibid*.) Section 317(e)(1) requires a quorum, which under the bylaws is three. (Bylaws, Art. III, §§ 2, 9.) The Board did not have a quorum of directors not a party to the proceeding.

However, Lizbeth has not shown that she is entitled to injunctive relief in connection with this non-compliance with Corporations Code section 317.

The court may issue a preliminary injunction when it appears that:

(1) Plaintiff is entitled to the relief sought in the complaint, and that relief involves restraining defendant's acts;
(2) Defendant's continuing behavior threatens waste or great or irreparable injury to another party;
(3) Defendant's acts would render final judgment ineffectual;
(4) Money damages would not afford adequate relief; or
(5) The amount of money damages needed to afford adequate relief are extremely difficult to determine.

(Code Civ. Proc. § 526(a)(1)-(5).)

Subdivision (a)(1) does not apply because the Complaint includes no allegations pertaining to the corporation to paying defendants' attorneys' fees, and seeks no relief in connection with this issue. The subject matter of this motion is beyond the scope of the pleading. There is no showing that defendants' acts would render a final judgment ineffective. Plaintiff has not shown that there is any threat of irreparable injury. There is no showing that money damages would not afford adequate relief. And the amount of money damages needed to afford adequate relief would be rather simple to determine – it's the amount of fees paid by the corporation to the defendants' attorneys. Lizbeth has not shown that injunctive relief is warranted under any of the provisions of section 526 of the Code of Civil Procedure.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: JYH on 8/17/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 403

(5)

Tentative Ruling

Re: **Barr v. Cook et al.**
Case No. 14 CECG 03917

Hearing Date: August 18, 2016 **(Dept. 403)**

Motion: Summary Judgment by Douglas Cook, M.D.

Tentative Ruling:

To deny the motion on both grounds. A triable issue of material fact exists as to whether Dr. Cook met the applicable standard of care. See Declaration of Way in its entirety. The Defendant has not met its burden of proof as to whether the statute of limitations has run. See CCP § 437c(p)(2).

Explanation:

Defendant moves for summary judgment on separate and alternative grounds:

1. That the care and treatment provided to the Plaintiff by Dr. Cook at all times met the applicable standard of care, including his technique during the performance of Plaintiff's laparoscopic cholecystectomy on May 28, 2009, and the extraction of Plaintiff's gallbladder; and

2. That Plaintiff's complaint is barred by application of the affirmative defense of the statute of limitations pursuant to California Code of Civil Procedure §340.5, as Plaintiff brought her claim more than three years after the date of injury. Additionally, the surgical clip discovered during the March 2014 surgery by Dr. Narahari was placed by Dr. Cook on May 28, 2009, left in the patient for a therapeutic purpose, cannot be considered a "retained foreign body", and cannot serve to toll the statute of limitations.

See Notice of Motion at page 2 lines 4-12.

Merits

The appropriate standard of care required of a medical professional is not a matter of common lay knowledge. Therefore, except in cases of "egregious" medical negligence, expert *medical* testimony is required in medical malpractice actions to establish the standard of care required of a physician (or other health care provider) under the circumstances. [See *Flowers v. Torrance Mem. Hosp. Med. Ctr.* (1994) 8

Cal.4th 992, 1001—single standard of care applied in medical malpractice cases regardless whether negligence is characterized as "ordinary" or "professional"; *Selden v. Dinner* (1993) 17 Cal.App.4th 166, 174—whether emotionally upset surgeon justified in postponing patient's elective surgery requires expert testimony; *Alef v. Alta Bates Hosp.* (1992) 5 Cal.App.4th 208, 215—physicians and nurses subject to separate standards of care; *Osborn v. Irwin Mem. Blood Bank* (1992) 5 Cal.App.4th 234, 271–273—blood bank supplying contaminated blood held to professional standard of care, requiring expert testimony; also see CACI 501, 502, 504]

When a defendant moves for summary judgment and supports his motion with expert declarations that his conduct fell **within** the community standard of care, he is **entitled** to summary judgment unless the plaintiff comes forward with conflicting **expert** evidence. See *Munro v. Regents of University of California* (1989) 215 Cal.App.3d 977, 984-985.

Here, the Defendant has met his burden of proof through the submission of the Declaration of Dr. Deck. See CCP § 437c(p)(2). He opines that Dr. Cook met the standard of care. See Declaration of Deck at ¶ 7.

In opposition, the Plaintiff submits the Declaration of Dr. Way. He opines that the Dr. Cook did not meet the standard of care on the grounds that Cook misinterpreted Barr's anatomy and as a result, removed only part of the gallbladder leaving two gallstones behind. See Declaration at ¶¶ 9 and 10. The Plaintiff has met her burden of proof pursuant to CCP § 437c(p)(2). A triable issue of material fact exists as to whether the standard of care was breached by Dr. Cook in performing surgery on the Plaintiff. Therefore, the motion will be denied. See CCP § 437c(p)(2).

Statute of Limitations

An action for personal injury or death caused by the professional negligence of a "health care provider" (e.g., physician, dentist, psychotherapist, chiropractor, hospital) must be commenced within the ***earlier*** of:

- *3 years* after the date of injury (an absolute outside time limit); *or*
- *1 year* after plaintiff discovered or should have discovered the injury. [CCP § 340.5]

A medical malpractice action is barred if *either* the 1-year or 3-year statutory period has expired. Plaintiffs thus have *two* hurdles to clear: i.e., if suit is commenced within 3 years of the date of injury, plaintiff must still satisfy the 1-year "discovery of injury" provision; and, suits filed within 1 year of such discovery may still be barred if the 3-year period has since run. [*Hills v. Aronsohn* (1984) 152 CA3d 753, 757-759, 199 CR 816, 818-819 & fn. 4]

Two different accrual dates govern medical malpractice actions by adults:

- The 3-year outside time limit begins to run when the patient is aware of a *physical manifestation* of his or her injury "without regard to awareness of the

negligent cause." [*Garabet v. Sup.Ct. (Boghosian)* (2007) 151 Cal.App.4th 1538, 1551] The "date of injury" may be much later than the date of the wrongful act where plaintiff suffers no physical harm until months or **years** after the wrongful act. [See *Steketee v. Lintz, Williams & Rothberg* (1985) 38 Cal.3d 46, 54—"'Wrongful act' and 'injury' are not synonymous"]

- The 3-year provision puts an absolute outside limit on a medical malpractice action, so that plaintiffs cannot sue thereafter even where they reasonably did not discover their physical harm was caused by defendant's negligence during the 3-year period. [See *Hills v. Aronsohn* (1984) 152 Cal.App.3d 753, 761—medical malpractice action time barred because brought more than 3 years after patient became aware of physical manifestation of injury (soreness and lumps in her breasts following silicone injections) even though patient was not then aware of its negligent cause]

The 1-year limitations period is measured from the date "plaintiff discovers, or through the exercise of reasonable diligence should have discovered, the injury," and applies *even if 3 years have not yet passed* from when the injury became manifest. [See CCP § 340.5] For purposes of the 1-year statute, "the accrual date is delayed until plaintiff is aware of her injury and its *negligent cause*." [*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1109, 245 CR 658, 661 (emphasis added)]

"Discovery of injury" may be much later than the date of the wrongful act; e.g., where plaintiff suffers no physical harm until months or years after the wrongful act. [*Garabet v. Sup.Ct. (Boghosian)* (2007) 151 Cal.App.4th 1538, 1545; see *Hills v. Aronsohn*, supra, 152 Cal.App.3d at 760—1-year statute did not commence until P learned negligent silicone injections caused her breast lumps and ultimate need for mastectomy]

The date plaintiff "should have discovered" the injury is when plaintiff suspects or *a reasonable person would have suspected* that plaintiff's "injury" was *caused by wrongdoing*. [See *Jolly v. Eli Lilly & Co.*, supra, 44 Cal.3d at 1110-1111] "So long as a *suspicion* exists, it is clear that the plaintiff must go find the facts; she cannot wait for the facts to find her." [*Jolly v. Eli Lilly & Co.*, supra, 44 Cal.3d at 1110-1111 (emphasis added)]

"In no event" shall the outside 3-year limit be tolled *except for:*

- fraud;
- intentional concealment; or
- the "*presence of a foreign body*, which has no therapeutic or diagnostic purpose or effect, in the person of the injured person." [CCP § 340.5 (emphasis added); see *Young v. Haines* (1986) 41 Cal.3d 883, 897—tolling grounds equally applicable to minors and adults; *Maher v. County of Alameda* (2014) 223 Cal.App.4th 1340, 1352—§ 340.5 foreign body exception applies to "items temporarily placed in the body as part of a procedure and meant to be removed at a later time" but is inapplicable "to objects and substances intended to be *permanently* implanted" (emphasis in original)]

Here, the Defendant's arguments are based upon the assertion that Plaintiff's **injury** occurred on **May 28, 2009** when Dr. Cook removed only part of her gallbladder. Thus, Defendant submits that the "outside 3-year limit" ran long before the Complaint was filed on December 31, 2014. See Defendant's Memorandum of Points and Authorities at page 11 lines 13-24.

However, as first determined by the Supreme Court in *Larcher v. Wanless* (1976) 18 Cal.3d 646, the terms "wrongful act" and "injury" in the medical malpractice statute of limitations are not synonymous; rather, word "injury" signifies both negligent cause and damaging effect of alleged wrongful act and not act itself. Id. at 656, fn. 11. While the Plaintiff does assert that the "wrongful act" was the failure of Dr. Cook to completely remove her gallbladder and its stones in 2009, she alleges that she suffered "**injury**" when she began to experience extreme pain in 2014 and underwent an emergency cholecystectomy. See Plaintiff's Fact No. 120 of her response to the Separate Statement supported by the Declaration of Dr. Way. See also Defendant's Facts Nos. 23-26 of its Separate Statement supported by the medical records of Saint Agnes Medical Center and the deposition of Dr. Narahari. Therefore, the Defendant has not met its burden of proof that the statute of limitations has run. See CCP § 437c(p)(2). The motion will be denied.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/17/16 .
(Judge's initials) (Date)

(27) **Tentative Ruling**

Re: ***State of California v. Casa de Campo, et al.***
Superior Court Case No. **15CECG01101**

Hearing Date: **August 18, 2016 (Dept. 403)**

Motion: County of Fresno's Motion for Withdrawal of Deposit

Tentative Ruling:

To Grant.

Explanation:

The application filed April 27, 2016 requesting a withdrawal of the probable valuation for tax purposes, met the apparent requirements set forth in CCP § 1255.210. It was verified, set forth the County's interest in the property and requested withdrawal of a stated amount. It was also served to the plaintiff and other parties. Moreover, no objection has been received. (CCP § 1255.230(a).)

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/17/16 .
(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***Baldwin v. Aon Risk Services Companies, Inc.***
Superior Court Case No.: 14CECG00572

Hearing Date: August 18, 2016 (**Dept. 403**)

Motion: By Defendants/Cross Complainants Aon Risk Services Companies, Inc., Aon Risk Insurance Services West, Inc., Aon plc, Aon Group, Inc., and Cross Complainant Aon Corporation for judgment on the pleadings of the seventh and third causes of action in the second amended complaint pursuant to Code of Civil Procedure section 438

Tentative Ruling:

To deny.

Explanation:

The motion is untimely. (Code Civ. Proc., § 438, subd. (e).)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/17/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 501

03/17

Tentative Ruling

Re: ***Sandoval v. Parlier Unified School District***
Case No. 14 CE CG 01837, lead case
Consolidated with case no. 15 CE CG 00411

Hearing Date: August 18th, 2016 (Dept. 501)

Motion: Defendant Alvarez's Motions to (1) Compel Responses to Form Interrogatories, and (2) Have Requested Admissions Deemed Admitted, and for Monetary Sanctions

Tentative Ruling:

To deny as moot defendant Alvarez's motion to compel plaintiff to respond to the form interrogatories – general (set one) and form interrogatories – employment (set one), served on June 7th, 2016.

To grant defendant's motion to deem plaintiff to have admitted the truth of the matters in the requests for admissions (set one) served on June 7th, 2016. (Code Civ. Proc. § 2033.280, subd. (b).)

To grant the request for monetary sanctions against plaintiff for his willful failure to respond to the discovery requests. (Code Civ. Proc. §§ 2030.290, subd. (c); 2033.280, subd. (c).) Plaintiff shall pay the law firm of McCormick Barstow LLP $420 in sanctions within 30 days of the date of service of this order.

Explanation:

On August 12, 2016, plaintiff filed a late opposition attaching responses to the form interrogatories – general (set one) and form interrogatories – employment (set one). Accordingly, an order compelling a further response is not called for.

However, no response has been made to the requests for admissions, and plaintiff is subject to an order deeming him to have admitted the truth of the matters in the requests for admissions based on his failure to respond in a timely manner. (Code Civ. Proc. § 2033.280, subd. (b).)

Because it appears that the sole stimulus for plaintiff's response to discovery was the motions to compel, defendant is also entitled to monetary sanctions against plaintiff for his willful failure to respond to the interrogatories until the motions had been filed, and his continuing failure to respond to the requests for admission. (Code Civ. Proc. §§ 2030.290, subd. (c); 2033.280, subd. (c).) Therefore, the court intends to award sanctions of $420 against plaintiff for his willful refusal to respond to the discovery requests.

Plaintiff argues that he has been deposed for a total of 28 hours, in an apparent attempt to oppose the sanction request. However, the role of written discovery and depositions are different. Interrogatories may be used to learn what the adverse party is contending, or how it rationalizes the facts as supporting a contention. An oral deposition, on the other hand, is limited to learning what a party has done, seen, heard, or been told. (See *Rifkind v. Superior Court* (1994) 22 Cal.App.4th 1255, 1262.) Moreover, "[a] party is permitted to use multiple methods of obtaining discovery and the fact that information was disclosed under one method is not, standing alone, a proper basis for refusing to provide discovery under another method." (*Irvington-Moore, Inc. v. Superior Court* (1993) 14 Cal.App.4th 733, 739.)

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 08/17/16 .
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***Baguinguito v. Maxwell, et al.***

Case No. 14CECG00403

Hearing Date: August 18, 2016 (Dept. 501)

Motion: By Defendant Andrew Maxwell, M.D. for summary judgment against plaintiff Fernando Baguinguito.

Tentative Ruling:

To deny the motion.

Explanation:

The Court notes that no reply brief appears in the Court's files as of August 16, 2016.

To obtain summary judgment, "all a defendant needs to do is to show that the plaintiff cannot establish at least one element of the cause of action." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853. If a defendant makes this showing, the burden shifts to the plaintiff to demonstrate that one or more material facts exist as to the cause of action or as to a defense to a cause of action. (CCP § 437(c), subdivision(p)(2).)

In a summary judgment motion, the pleadings determine the scope of relevant issues. (*Nieto v. Blue Shield of Calif. Life & Health Ins. Co.* (2010) 181 Cal.App.4th 60, 74.) A defendant need only "negate plaintiff's theories of liability *as alleged in the complaint;* that is, a moving party need not refute liability on some theoretical possibility not included in the pleadings." (*Hutton v. Fidelity Nat'l Title Co.* (2013) 213 Cal.App.4th 486, 493 (emphasis in original).)

The court examines affidavits, declarations and deposition testimony as set forth by the parties, where applicable. (*DeSuza v. Andersack* (1976) 63 Cal.App.3d 694, 698.) Any doubts about the propriety of summary judgment are to be resolved in favor of the opposing party. (*Yanowitz v. L'Oreal USA, Inc.* (2003) 106 Cal.App.4th 1036, 1050.)

A court will "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

Plaintiff has filed a lawsuit alleging a single cause of action for medical malpractice stemming from a cataract surgery after which Plaintiff alleges he lost vision in his left eye and suffered resulting damages from that and from subsequent surgical procedures attempting to repair the damage done.

Defendant moved for Summary Judgment on the basis of the declaration of Dr. Salz, who is a board-certified ophthalmologist, who opined that the work of Dr. Maxwell fell within the standard of care and that the issues with Plaintiff were a known complication that can appear in the absence of negligence. (Salz decl. at ¶13.) Salz states that Plaintiff experienced the pain and discomfort in his eye the night of the surgery and that, by delaying informing Dr. Maxwell until the following morning, "it was too late and the damage had been done." (Salz decl. at ¶14.) As a result, Dr. Maxwell in no way caused or contributed to plaintiff's injuries. (Salz Decl. ¶15.)

In opposition, Plaintiff provides the deposition transcript of their expert, Dr. Kaye, who is also board-certified and who treated Plaintiff after Dr. Maxwell's surgery. Dr. Kaye stated that, based on his review of the records and examination of plaintiff, Plaintiff did not require cataract surgery in the first place and that the presence of glaucoma (which Dr. Maxwell had already diagnosed Plaintiff with) would present a high risk for optic nerve damage and inflammation. (Depo of Kaye, pp. 37-39, 45, 63-64.) As a result of this determination, and other factors, Dr. Kaye opined that Dr. Maxwell's behavior breached the applicable standard of care. (Depo of Kaye, pp. 25, 27-30, 37, 45, 59-60, 63-64.) Dr. Kaye also opined that this caused the injury to Plaintiff's eye. (Depo of Kaye, pp. 63-64.)

Applying the *Aguilar* analysis, although Defendants appear to have met their burden of production, it appears that Plaintiff has met his burden of showing that there is at least a question of material fact as to whether Dr. Maxwell's actions did in fact meet the standard of care and cause Plaintiff's injury.

As a result, the motion for summary judgment is denied.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 08/16/16 .
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: **Rafael Ordaz v. Ogonna Oyeje et al.**
Case No. 15 CECG 03203

Hearing Date: August 18, 2016 **(Dept. 501)**

Motion: By the Plaintiff seeking leave to file a First Amended Complaint

Tentative Ruling:

To deny the motion as moot. The First Amended Complaint filed on June 23, 2016 is timely filed pursuant to CCP § 472.

Explanation:

On August 17, 2015, Rafael Ordaz, self-represented filed a complaint. He is presently incarcerated at California State Prison--Corcoran. He alleges a cause of action for medical malpractice against the prison's medical staff, Dr. Ogonna Oyeje, Dr. John Chokatos, Dr. Junior Fortune, Merix Pascual, R.N. and Dr. Thomas Monfore based upon their alleged failure to timely and properly treat his rash. The rash turned out to be MERSA.

On June 20, 2016, the Plaintiff filed a motion seeking leave to file a First Amended Complaint. None of the Defendants have been served. On June 23, 2016, Plaintiff filed the First Amended Complaint. CCP § 472 states:

> (a) A party may amend its pleading once without leave of the court at any time before the answer or demurrer is filed, or after a demurrer is filed but before the demurrer is heard if the amended complaint, cross-complaint, or answer is filed and served no later than the date for filing an opposition to the demurrer. A party may amend the complaint, cross-complaint, or answer after the date for filing an opposition to the demurrer, upon stipulation by the parties. The time for responding to an amended pleading shall be computed from the date of service of the amended pleading.
>
> (b) This section shall remain in effect only until January 1, 2021, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2021, deletes or extends that date.

Therefore, there was no need to file the motion and it is rendered moot. The First Amended Complaint filed on June 23, 2016 is the operative pleading.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 08/17/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 502

(20) **Tentative Ruling**

Re: ***McDonald v. Beck et al.***, Superior Court Case No. 13CECG03807

Hearing Date: **August 18, 2016 (Dept. 502)**

Motion: Plaintiff's Motion for Attorneys' Fees

Tentative Ruling:

To deny the motion for attorneys' fees. (Code Civ. Proc. § 405.38.)

Explanation:

> The court shall direct that the party prevailing on any motion under this chapter be awarded he reasonable attorney's fees and costs of making or opposing the motion **unless the court finds that the other party acted with substantial justification** or that other circumstances make the imposition of attorney's fees and costs unjust.

(Code Civ. Proc. § 405.38, emphasis added.)

"[T]he phrase 'substantial justification' has been understood to mean that a justification is clearly reasonable because it is well-grounded in both law and fact." (*Doe v. United States Swimming, Inc.* (2011) 200 Cal.App.4th 1424, 1434.)

Being intimately familiar with this case and the arguments for and against the motion to expunge, the court finds that defendant acted with substantial justification in filing the motion to expunge. Though ultimately the court ruled in favor of plaintiff and denied the motion, the motion was supported by colorable arguments and evidence, which presented a close call for the court. Accordingly, the court intends to deny the request for attorneys' fees.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 08/15/16 .
(Judge's initials) (Date)

(28) **Tentative Ruling**

Re: ***Nisei Farmers League v. California Labor and Workforce Development Agency, et al.***

Case No. 16CECG02107

Hearing Date: August 18, 2016 (Dept. 502)

Motion: Applications by Plaintiff for Jason C. Schwartz and William J. Kilberg to appear as counsel *pro hac vice* for Plaintiff Nisei Farmers League

Tentative Ruling:

To grant the applications.

Explanation:

Plaintiff has filed applications for the admissions of Jason C. Schwartz and William J. Kilberg *pro hac vice* in the above-entitled case. The applications appear to comply with the requirements of California Rule of Court 9.40 and no opposition has been filed in this matter. Therefore, the Court grants the respective applications.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 08/17/16 .
(Judge's initials) (Date)

(29) **Tentative Ruling**

Re: ***People of the State of California, Department of Transportation v. Ray Roeder, et al.***
Superior Court Case No. 15CECG02527

Hearing Date: **August 18, 2016 (Dept. 502)**

Motion: Application for Withdrawal of Deposit of Probable Compensation

Tentative Ruling:

To grant Defendant Roeder's application to withdraw the amount of $415,000. (Code Civ. Proc. §1255.220.) Proposed order signed. Hearing off calendar.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 08/17/16 .
(Judge's initials) (Date)

Tentative Rulings for Department 503

(23)

Tentative Ruling

Re: ***Jodi Lorang v. Richard Braden***
Superior Court Case No. 16CECG01310

Hearing Date: Thursday, August 18, 2016 (**Dept. 503**)

Motion: Defendant Richard Braden's Demurrer to Plaintiff Jodi Lorang's Complaint

Tentative Ruling:

To sustain with leave to amend Defendant Richard Braden's demurrer to Plaintiff Jodi Lorang's first cause of action for fraud and constructive trust. (Code Civ. Proc., § 430.10, subd. (e).)

To find moot Defendant Richard Braden's demurrer to any contract claims that Plaintiff Jodi Lorang may be asserting.

To grant Plaintiff Jodi Lorang 10 days, running from service of the minute order by the clerk, to file and serve a first amended complaint. (Code Civ. Proc., § 472a, subd. (c).) All new allegations in the first amended complaint are to be set in **boldface** type.

Explanation:

1. Defendant's Demurrer to Plaintiff's First Cause of Action for Fraud and Constructive Trust

Defendant Richard Braden ("Defendant") demurs to Plaintiff Jodi Lorang's ("Plaintiff") first cause of action for fraud and constructive trust on the ground that the cause of action fails to state sufficient facts to constitute a viable cause of action against Defendant.

First, Defendant contends that Plaintiff's first cause of action is barred by the statute of limitations. As Plaintiff's first cause of action is for promissory fraud or false promise, the applicable statute of limitations is Code of Civil Procedure section 338, subdivision (d), which provides that "[a]n action for relief on the ground of fraud or mistake" must be brought within three years after the cause of action accrues. Section 338, subdivision (d) also provides that: "The case of action is not deemed to have accrued until the discovery, by the aggrieved party, of the facts constituting the fraud or mistake." "A general demurrer based on the statute of limitations is only permissible where the dates alleged in the complaint show that the action is barred by the statute of limitations. The running of the statute must appear 'clearly and affirmatively' from the dates alleged. It is not sufficient that the complaint *might* be barred. If the dates

establishing the running of the statute of limitations do not clearly appear in the complaint, there is no ground for general demurrer." (*Roman v. County of Los Angeles* (2000) 85 Cal.App.4th 316, 324-325.)

In her first cause of action, Plaintiff alleges that, on January 4, 2010, Plaintiff and Defendant agreed to purchase and renovate the property located at 346 West Audobon Drive, Fresno, California, 93711. While Defendant would make the down payment of $94,000.00 and take title to the property in his name only, Plaintiff would pay for renovations in an amount reasonably equal to the amount of Defendant's down payment and then Defendant would deed the property to both Plaintiff and Defendant, as joint tenants. (Plaintiff's Complaint, p. 3, lines 3-13.) From January 8, 2010 through August 31, 2011, Plaintiff paid for all renovation costs in the amount of $75,000.00 and contributed labor with a value of $65,000.00. Since Plaintiff completed her portion of the agreement, she believed that Defendant had deeded the property to both Plaintiff and Defendant as joint tenants. (Plaintiff's Complaint, p. 3, lines 21-27.) It was not until March 2, 2016, when Defendant sent Plaintiff a letter offering to reimburse her for $70,000.00 in renovation costs, that Plaintiff learned that Defendant had not conveyed or deeded any interest in the property to Plaintiff. (Plaintiff's Complaint, p. 3, line 28, to p. 4, line 7.)

Defendant contends that Plaintiff's fraud claim accrued in August 2011, when the remodeling project finished and no document was recorded conveying an interest in the property to Plaintiff, and, therefore, Plaintiff's fraud claim became time-barred in 2014. However, "[u]nder the discovery rule, the statute of limitations begins to run when the plaintiff suspects or should suspect that her injury was caused by wrongdoing, that someone has done something wrong to her. As we said in *Sanchez* and reiterated in *Gutierrez*, the limitations period begins once the plaintiff has notice or information of circumstances to put a reasonable person on inquiry." (*Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1110-1111 [internal quotation marks omitted].) In this case, none of the facts alleged in Plaintiff's complaint or properly judicially noticed establish that Plaintiff had any knowledge, notice or suspicion that Defendant had failed to convey a joint tenancy interest in the property to Plaintiff after the renovations were completed sufficient to put a reasonable person on notice to inquire and investigate before Defendant sent Plaintiff the March 2, 2016 letter. Therefore, the Court finds that Plaintiff's first cause of action is not clearly and affirmatively barred by the applicable three-year statute of limitations.

Second, Defendant contends that Plaintiff has failed to allege sufficient facts to constitute a viable cause of action for promissory fraud or false promise. To plead a cause of action for false promise, a plaintiff must plead sufficient facts establishing that: (1) that defendant made a promise to plaintiff; (2) that defendant did not intend to perform this promise when he/she/it made it; (3) that defendant intended that plaintiff rely on this promise; (4) that plaintiff reasonably relied on defendant's promise; (5) that defendant did not perform the promised act; (6) that plaintiff was harmed; and (7) that plaintiff's reliance on defendant's promise was a substantial factor in causing plaintiff's harm. (CACI No. 1902.) "In California, fraud must be pled specifically; general and conclusory allegations do not suffice. Thus the policy of liberal construction of the pleadings . . . will not ordinarily be invoked to sustain a pleading defective in any

material respect. This particularity requirement necessitates pleading *facts* which show how, when, where, to whom, and by what means the representations were tendered." (*Small v. Fritz Companies, Inc*., *supra*, 30 Cal.4th 167, 184 [internal quotes omitted]; see also *Tarmann v. State Farm Mut. Auto Ins. Co.* (1991) 2 Cal.App.4th 153, 159 [false promise is simply a type of intentional misrepresentation].)

The Court determines that Plaintiff has not alleged all of the facts necessary to establish a viable cause of action for promissory fraud. First, Plaintiff has adequately pled that Defendant did not intend to perform his promise when he made it. (Plaintiff's Complaint, p. 3, line 18.) Second, Plaintiff has sufficiently alleged that she reasonably relied on Defendant's promise. (Plaintiff's Complaint, p. 3, lines 18-20.) Third, Plaintiff has satisfactorily pled that Defendant did not perform the promised act. (Plaintiff's Complaint, p. 4, line 7.) Fourth and fifth, Plaintiff has adequately alleged that she was harmed and that her reliance on Defendant's promise was a substantial factor in causing her harm. (Plaintiff's Complaint, p. 4, lines 5-10.)

However, initially, while Plaintiff has alleged that, on January 4, 2010, Defendant promised Plaintiff that he would convey a joint tenancy interest in the property located at 346 West Audobon Drive to Plaintiff once Plaintiff paid for renovations to the home in an amount reasonably commensurate with Defendant's down payment, Plaintiff has failed to allege how, where, and by what means Defendant's promise was tendered. (Plaintiff's Complaint, p. 3, lines 3-11.) Further, Plaintiff has failed to allege that Defendant intended that Plaintiff rely on Defendant's promise.

Third, Defendant contends that Plaintiff's first cause of action also fails to state a viable cause of action because constructive trust is a remedy and not a cause of action. Defendant is correct. A request for imposition of a constructive trust is an equitable remedy that may be appropriate to relieve harms caused by various causes of action, including fraud, not an independent cause of action. (*Glue-Fold, Inc. v. Slautterback Corp.* (2000) 82 Cal.App.4th 1018, 1023, fn. 3; *BGJ Associates, LLC v. Superior Court* (1999) 75 Cal.App.4th 952, 967.)

Accordingly, the Court sustains with leave to amend Defendant's demurrer to Plaintiff's first cause of action for fraud and constructive trust pursuant to Code of Civil Procedure section 430.10, subdivision (e).

2. Defendant's Demurrer to Any Contract Claims that Plaintiff May Be Asserting

Defendant demurs to any contract claims asserted in Plaintiff's complaint on the grounds that the contract claims are barred by the statute of limitations, that the contract claims are based on an oral contract that is unenforceable pursuant to the statute of frauds, and that the contract claims are fatally vague and uncertain. (Code Civ. Proc., § 430.10, subds. (e) & (f).) While the Court notes that Plaintiff's complaint is confusing because the first two pages of the pleading are two pages of a Judicial Council contract form complaint, Plaintiff explicitly asserts that she is only attempting to allege a cause of action for fraud and constructive trust and a cause of action for conversion. (Plaintiff's Complaint, p. 2, No. 8.) Therefore, the Court finds that Plaintiff is not attempting to allege a cause of action for breach of contract. Accordingly, the

Court finds that Defendant's demurrer to any contract claims that Plaintiff may be asserting is moot.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 08/15/16 .
(Judge's initials) (Date)

(24) **Tentative Ruling**

Re: ***State of California v. PRG Farms, LP***
Court Case No. 16CECG00059

Hearing Date: **August 18, 2016 (Dept. 503)**

Motion: Plaintiff's Motion for Order of Possession

Tentative Ruling:

To continue to Wednesday, August 24, 2016, to allow plaintiff to provide evidence that either timely notice has been given to defendant County of Fresno, or that said defendant waives notice.

Explanation:

Before the court can address the merits of the motion, this notice issue must be addressed. Code of Civil Procedure Section 1255.410 requires that this motion be served on "the record owner of the property and on the occupants, if any." (*Id.,* subdivision (b).) This includes not just owners in fee, but record owners of other types of compensable interests in property, such as lienholders and owners of recorded easements in the property. (See Code Civ. Proc. § 1235.125—"When used with reference to property, "interest" includes any right, title, or estate in property." See also *Milstein v. Security Pac. Nat. Bank* (1972) 27 Cal.App.3d 482—Lienholder entitled to share of award to extent of the impairment of security; *City of Oakland v. Schenck* (1925) 197 Cal. 456, 460—even where compensable interest is small or difficult to measure, constitutional concerns require such interests to be addressed; *People v. Kubic* (1967) 254 Cal.App.2d 470.)

The complaint indicates that the County of Fresno has a conservation easement interest in the property. However, the court could find no proof of service related to this motion indicating the County had been served with any notice. Because it is possible that even if notice was not given the County may be amenable to waiving notice, the court will forego denying the motion on this basis, and will instead give plaintiff an opportunity to address the issue. If a proper proof of service or waiver of notice is filed, then the court will address the merits of the motion.

Pursuant to California Rules of Court, rule 3.1312 and Code of Civil Procedure section 1019.5(a), no further written order is necessary. The minute order adopting this ruling will serve as the order of the court, and service by the clerk of the minute order will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 08/15/16 .
(Judge's initials) (Date)

(17) **Tentative Ruling**

Re: ***Bradshaw v. Acqua Concepts, Inc. et al.***
Court Case No. 16 CECG 00949

Hearing Date: August 18, 2016 (Dept. 503)

Motion: Defendants' Motion for Bond [Corp. Code § 800, subd. (c)]

Tentative Ruling:

To grant. Plaintiff shall post a $50,000 bond.

Explanation:

At any time within 30 days after service of summons the corporation or a defendant in a derivative suit brought under Corp. Code § 800, subd. (b) may move for an order to require the plaintiff to post a bond. The motion must be based on one or both of the following grounds:

> (1) there is no reasonable possibility that the suit will benefit the corporation or its shareholders; or
> (2) the moving party, if other than the corporation, did not participate in the transaction complained of in any capacity.

(Corp. Code, § 800, subd. (c).)

The moving defendant bears the burden of establishing a probability in support of any of the grounds on which it is based. (Corp. Code § 800, subd. (d); see also *Burt v. Irvine Co.* (1965) 237 Cal.App.2d 828, 868.) At the hearing, the defendant may present evidence in the form of declarations or oral testimony. The evidence should address the issues of whether the statutory grounds for the motion exist and the amount of the probable reasonable expenses of the defendant, including attorney fees. (Corp. Code, § 800, subd. (d).)

Here, defendants rely primarily on the fact that plaintiff's complaint fails to comply with the requirements of Corporations Code section 800, and as such fails to state a derivative claim. Defendants argue that plaintiffs cannot amend to correct these deficiencies and accordingly, a bond should be ordered.

A shareholder cannot initiate a derivative suit without first informing the directors about the action and making a reasonable effort to induce them to commence suit themselves or otherwise redress the wrong, unless such efforts would be "useless" or "futile" (Corp. Code, § 800, subd. (b)(2).) The complaint must allege "with particularity plaintiff's efforts to secure from the board such action as plaintiff desires, or the reasons for not making such effort." (Corp. Code, § 800, subd. (b)(2).) Plaintiff must also allege that he or she has: 1) informed the corporation (or the board) in writing of the ultimate

facts of each cause of action to be asserted against each defendant; or delivered to the corporation (or the board) a true copy of plaintiff's proposed complaint. (Corp. Code, § 800, subd. (b)(2).)

In this case, the original complaint makes no attempt to allege compliance with section 800, subdivision (b)(2) either by notification of the Board or by alleging futility. The question is whether defendants can establish "a probability" that there is no "reasonable possibility" that prosecuting the complaint against defendants will benefit the corporation or its shareholders. (Corp. Code, § 800, subd. (c)(1).) Because an assessment of the reasonable possibility of corporate benefit requires the court to evaluate possible defenses that the plaintiff must overcome to prevail at trial, in this case we must determine whether the complaint could be amended to state a cause of action. (*Donner Mgmt. Co. v. Schaffer* (2006) 142 Cal.App.4th 1296, 1304.)

The Declaration of Jeff Bradshaw and the First Amended Complaint filed by plaintiff indicate that there is no reasonable possibility that the complaint could be amended to state a cause of action. First, the First Amended Complaint is identical to the original complaint save for the addition of the following language:

> 24. Plaintiff alleges upon strong belief that the instant derivative suit is the only way to protect Acqua Concepts, and derivatively, Plaintiff's interest in Acqua Concepts, and that any demand on the Acqua Concepts board would be futile, since previous demands on the Acqua Concepts board for information or corrective action have all been ignored.
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> 25. Plaintiff alleges he is excused from making a demand of the Board because Mr. Legari has during the relevant times alleged herein, and at the time the complaint was filed, been in control of the company and its finance, during the same time plaintiff alleges the Legaris engaged in misappropriation and breach of fiduciary duty which have harmed the corporation. (See Declaration of Jeffrey Bradshaw in Opposition to Defendants' Motion for a Bond, attached hereto as Exhibit B, and incorporated herein.)
>
> 26. Plaintiff seeks to act as the corporation's representative prosecuting the corporation's claims against third party defendants who have harmed the corporation.

This is inadequate to establish futility. A demand for information is not the same as a demand for corrective action. Nor does the Declaration establish that a demand for "corrective action" was ever truly made.

The Bradshaw Declaration makes reference to an April 14, 2015 letter sent by Mr. Bradshaw, which referenced the need to: 1) make a dividend distribution; 2) add outside directors; 3) bring in new talent to lead the Corporation; and 4) stop the battles between James Legari and Clevenger, and focus on growing the business. (Bradshaw Decl. ¶ 10.) Finally, on September 14, 2015, Jeff Bradshaw wrote to James Legari and

his attorney, Bonnie Anderson, outlining nine requests for information related to financial statements, retained earnings, shareholder meetings, and fiduciary obligations. (Bradshaw Decl. ¶¶ 10, 17.) This letter included a request as to why no dividends have ever been paid and an inquiry as to why there were no retained earnings. (Bradshaw Decl. ¶ 17) Apparently no defendant ever responded to these communications.

However, none of these communications were directed to the full Board of Directors and except for the general references to a lack of retained earnings with which to pay dividends, none demanded any action to stop what the complaint now protests, waste, self-dealing, excessive salaries, and breach of fiduciary duties. Simply put, asking one director for financial information and a dividend is different than demanding the board stop corporate looting.

Moreover, Jeff Bradshaw's declaration makes reference to the fact that Richard Clevenger was frequently opposed to James Legari. (Bradshaw Decl. at ¶¶ 9, 10, 12-13.) Furthermore, Bradshaw's Declaration admits that "a few months" before the declaration was signed a third director was added, Terry Long. (Bradshaw Decl. ¶ 9.) There is no information tending to indicate that Mr. Long would have sided with Mr. Legari. To show demand futility, plaintiff must allege facts creating a reasonable doubt the board of directors could have properly exercised its independent and disinterested business judgment in responding to a demand. (See *Bader v. Anderson* (2009) 179 Cal.App.4th 775, 791-792, 797.) "[T]he court must be apprised of facts specific to each director from which it can conclude that that particular director could or could not be expected to fairly evaluate the claims of the shareholder plaintiff." (*Shields v. Singleton* (1993) 15 Cal.App.4th 1611, 1622.) The addition of Mr. Long would have been at or before the time the complaint was filed. Accordingly, it cannot be said that a Corporations Code section 800 demand on the Board would have been futile as the demand would have been made to the full three person board, not just Mr. Legari, and been of a type not previously made.

Amount of Bond

The Declaration of Travis R. Stokes establishes his qualifications as an attorney able to estimate the cost of defending the instant lawsuit. His estimate that it will cost at least $50,000.000 to do so is unopposed.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 08/17/16 .
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Rudy Castro et al. v. Sunset Waste Systems, Inc.***
Superior Court Case No. 16 CECG 01849

Hearing Date: August 18, 2016 **(Dept. 503)**

Motion: Demurrer to the original Complaint filed by Defendant Sunset Waste Systems, Inc.

Tentative Ruling:

To take the demurrer off calendar for failure to comply with CCP § 430.41(a). It states in relevant part: "Before filing a demurrer pursuant to this chapter, **the demurring party shall meet and confer in person or by telephone** with the party who filed the pleading that is subject to demurrer..." The Declaration of Pollak submitted with the demurrer indicates that he sent a letter to the Plaintiffs. See ¶2. This is not in compliance with the statute.

The parties are ordered to meet & confer as required by CCP § 430.41(a). If the meet & confer is unsuccessful, then the demurring party may calendar a new date for hearing the demurrer to the original complaint.

Pursuant to California Rules of Court, Rule 391(a) and Code of Civil Procedure § 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 08/17/16 .
(Judge's initials) (Date)